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FEDERAL COMMUNICATIONS COMMISSION  
Enforcement Bureau  
Investigations and Hearings Division  
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Washington, DC 20554

February 12, 2004

VIA UNITED STATES MAIL  
AND FACSIMILE (703) 351-3676

Mr. Joseph DiBella  
Regulatory Counsel  
Verizon Communications Inc.  
1515 North Courthouse Road, Suite 500  
Arlington, Virginia 22201

*Re: Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application for Transfer of Control of a Submarine Cable License, CC Docket No. 98-184*

Dear Mr. DiBella:

This letter responds to a request for interpretation from Verizon Communications Inc. ("Verizon"),<sup>1</sup> the successor corporation arising from the merger of GTE Corporation and Bell Atlantic Corporation, concerning the sunset of a condition in the *Bell Atlantic/GTE Merger Order*<sup>2</sup> pertaining to the deployment of xDSL service in wire centers serving low-income households. As explained in more detail below, Verizon asks the Enforcement Bureau to find that the xDSL rollout requirements contained in the voluntary conditions for the merger<sup>3</sup> sunsetted on June 30, 2003, in those states in which Verizon had not yet triggered the required condition. For the reasons discussed below, we grant Verizon's request.

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<sup>1</sup> See Letter from Joseph DiBella, Regulatory Counsel, Verizon Communications Inc., to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, dated November 14, 2003 ("*Interpretation Request*"). On March 15, 2002, the Commission delegated authority to the Enforcement Bureau to carry out merger-related audit and compliance tasks. See Delegation of Additional Authority to the Enforcement Bureau, 17 FCC Rcd 4795 (2002).

<sup>2</sup> See Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application for Transfer of Control of a Submarine Cable Landing License, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd 14032 (2000) ("*Bell Atlantic/GTE Merger Order*" or "*Merger Order*").

<sup>3</sup> *Id.* at 14259 *et seq.*

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Condition IV of the *Bell Atlantic/GTE Merger Order* generally requires Verizon to deploy xDSL service in wire centers serving low-income households in urban and rural areas of its in-region states. Specifically, 180 days after the merger closing date and once Verizon has deployed xDSL service in 20 urban or 20 rural wire centers in a state, then, and for at least 36 months thereafter, at least 10 percent of those urban or rural wire centers must be in service areas that have the greatest number of low-income households.<sup>4</sup> For example, if Verizon installed xDSL in 20 urban wire centers in a state by December 31, 2001, it would be required to maintain at least 10 percent of those wire centers in low-income urban areas for at least 36 months thereafter or until December 31, 2004.

Condition XXIV of the *Bell Atlantic/GTE Merger Order* provides that, with certain exceptions, all conditions associated with the *Merger Order* shall cease to be effective 36 months from the merger closing date.<sup>5</sup> The Verizon merger closing date was June 30, 2000, and the general default sunset period therefore ended on June 30, 2003. The Commission recognized, however, that Verizon's obligation to conform to some conditions would continue beyond June 30, 2003, where a particular condition took effect after the merger closing date.<sup>6</sup> Condition IV is one such condition. By its own terms the condition is not triggered until, at the earliest, 180 days after the merger closing. Thereafter, Verizon's obligation necessarily extends for 36 months. So in every state where the condition trigger has been met, the condition necessarily extends until beyond June 30, 2003. Using the example above, Verizon would be required to maintain xDSL in the low income urban wire centers until December 31, 2004, 18 months after the June 30, 2003 default sunset period.

Verizon contends that, in those states where it has not or could not deploy xDSL in 20 urban or 20 rural wire centers by June 30, 2003, the requirements of Condition IV with respect to those states should be interpreted to sunset on June 30, 2003.<sup>7</sup> Similarly, Verizon argues that the contingent applicability of Condition IV should be read as a "live requirement" until the end of the default period on June 30, 2003, but that, if its 20-wire center contingency is not reached by then, it cannot be revived even if the contingency is met after that date.<sup>8</sup> In support, Verizon argues that this interpretation is consistent with the Commission's basic policy that the conditions in the *Merger Order* were meant to be limited and temporary.<sup>9</sup> Under any other interpretation, Verizon contends that Condition IV could remain in effect indefinitely because 10 of the 30 states at issue do not have 20 urban wire centers and 9 of those states do not have 20 rural wire centers.<sup>10</sup> Further, Verizon

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<sup>4</sup> *Id.* at 14292-93, ¶ 15.

<sup>5</sup> *Id.* at 14331, ¶ 64.

<sup>6</sup> *Id.* at 14146, ¶ 255.

<sup>7</sup> *Interpretation Request* at 2-3. According to Verizon, it triggered Condition IV in 17 states for the urban requirement and 9 states for the rural requirement prior to June 30, 2003. Verizon does not assert that its obligation to provide xDSL in the low-income areas in states where it did trigger Condition IV before June 30, 2003 has lapsed. In those states, Verizon agrees it is obligated to continue to satisfy the condition for at least 36 months from the trigger date.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1-2 (citing *Bell Atlantic/GTE Merger Order* at 14201, ¶ 368).

<sup>10</sup> *Id.* at 4.

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argues that if Condition IV were to continue indefinitely, Condition XXII<sup>11</sup> would require Verizon to engage an independent auditor to determine its ongoing "compliance" with Condition IV, despite the absence of anything to have triggered the condition in these states in the first place. Verizon contends that the *Merger Order* should not be read to contain this infinite obligation.<sup>12</sup>

We agree with Verizon's proffered interpretation. While Condition IV of the *Bell Atlantic/GTE Merger Order* does not set forth an explicit sunset computation for states not reaching the 20-wire center level within the initial 36-month default period, Verizon's request that the *Merger Order* be read to assign the June 30, 2003 date is reasonable and consistent with the Commission's express policy as stated in the *Merger Order* to obligate Verizon's compliance with the merger conditions for a finite period of time.<sup>13</sup> Further, it avoids the imposition of a continuing audit requirement in the absence of a triggering event.

Accordingly, we grant Verizon's request for interpretation and find that Condition IV sunsetted on June 30, 2003, in those states where Verizon had not yet triggered the condition.

Sincerely,



William H. Davenport  
Chief,  
Investigations and Hearings Division  
Enforcement Bureau

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<sup>11</sup> *Bell Atlantic/GTE Merger Order* at 14327-29, ¶¶ 56-57.

<sup>12</sup> *Interpretation Request* at 4.

<sup>13</sup> *Bell Atlantic/GTE Merger Order* at 14201, ¶ 368.